

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSA L. JETER and DEPARTMENT OF THE ARMY,  
DIRECTORATE OF CONTRACTING, Fort Meade, MD

*Docket No. 00-1647; Submitted on the Record;  
Issued May 10, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation, including medical benefits, for the accepted condition of left iliofemoral sprain as of January 4, 2000.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective January 4, 2000.

On May 13, 1997 appellant, then a 57-year-old contract specialist, filed an occupational disease claim alleging that on February 25, 1997 she first realized that the severe pain in her back and/or side was due to her having to climb three flights of steps. The Office accepted the claim for left iliofemoral sprain and placed appellant on the automatic rolls for temporary total disability by letter dated November 28, 1997.

The Office referred appellant to Dr. H.S. Pabla for a second opinion Board-certified orthopedic surgeon. In a March 3, 1998 report, Dr. Pabla diagnosed lumbar muscle strain, exogenous obesity, depression, diabetes and hypertension. Based on a physical examination, medical history and objective testing, he concluded that appellant had been appropriately treated and that she was capable of performing her job duties without any limitations or restrictions. Dr. Pabla also opined that appellant's "vague subjective complaints are associated with normal examination of the spine."

In an April 5, 1998 letter, Dr. David Leichtling, an attending physician, indicated he had reviewed Dr. Pabla's March 3, 1998 report and disagreed with the physician's conclusions. Dr. Leichtling opined that appellant continued to be totally disabled due to her February 25, 1997 employment injury. He noted that appellant's "physical examination showed slightly better mobility for walking, but she continued to be disabled due to her chronic and recurrent low back and left leg pain" and that the "[i]nitial injury was thought to be a strain of the left iliopsoas muscle occurring at work February 25, 1997."

In a subsequent report dated August 11, 1998, Dr. Leichtling opined that appellant's "iliopsoas injuries healed with a certain amount of iliopsoas inelasticity," and that "the fibers may be inelastic enough at times, especially with prolonged sitting and routine activities, they may tighten up sufficiently that thereafter, attempts to move to her normal range of motion cause spasm and pain." In conclusion, he opined that appellant was unable to perform her usual duties due to frequency with which her pain and muscular spasm episodes occur.

Due to the conflict in the medical opinion evidence, the Office referred appellant for an impartial medical examination on February 23, 1999 with Dr. Raymond D. Drapkin, a Board-certified orthopedic surgeon. In a March 11, 1999 report, Dr. Drapkin diagnosed degenerative disc disease at L3-4. He opined that appellant's "problem is arthritic in nature" and that she did not sustain "a permanent impairment to her back or a zero permanent impairment to her back as a result of her job." In conclusion, Dr. Drapkin opined that no further medical treatment was necessary and that appellant was capable of performing her duties with no restrictions.

On September 22, 1999 the Office issued a notice of proposed termination of compensation, noting that all employment-related residuals and disability had resolved.

By decision dated January 4, 2000, the Office terminated all compensation, including payment of medical benefits, effective that date resulting from the accepted left iliofemoral sprain.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective January 4, 2000.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.<sup>4</sup>

In the instant case, Dr. Leichtling, was of the opinion that appellant continued to be disabled due to her accepted employment injury. In response to the Office's request for a second

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<sup>1</sup> *Raymond W. Behrens*, 50 ECAB \_\_\_\_ (Docket No. 97-1289, issued January 14, 1999).

<sup>2</sup> *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

<sup>3</sup> *Raymond W. Behrens*, *supra* note 1.

<sup>4</sup> *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

opinion, Dr. Pabla opined that there were no continued residuals from appellant's work-related left iliofemoral sprain.

Where there exists a conflict of medical opinion, the case is referred to an impartial medical specialist for the purpose of resolving the conflict. If the opinion of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background, it must be given special weight.<sup>5</sup>

Because of the conflict in medical opinion between Drs. Leichtling and Pabla, and pursuant to section 8123(a) of the Federal Employee's Compensation Act, the Office referred appellant to a third physician for an impartial medical examination.<sup>6</sup> Dr. Drapkin examined appellant on March 11, 1999. He provided an accurate and comprehensive review of appellant's medical work and history and on the basis of this review and his examination, found that there was no objective evidence to substantiate appellant's complaints. Dr. Drapkin concluded that appellant had fully recovered from her work injuries and was capable of resuming her duties as a contract specialist. Specifically, he concluded that appellant had no permanent impairment to her back from her employment injury and no further medical treatment was required. Dr. Drapkin attributed appellant's current problem to arthritis and opined that she was capable of performing her usual duties with no restrictions.

The Board finds that Dr. Drapkin's opinion is well rationalized and is based on a proper medical and factual background and must therefore be accorded special weight on the issue of whether appellant had any residuals or disability resulting from the accepted left iliofemoral sprain. As the weight of the medical opinion evidence on this issue, the report justifies the Office's termination of appellant's compensation benefits effective January 4, 2000.<sup>7</sup>

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<sup>5</sup> *Irene M. Williams*, 47 ECAB 619, 622 (1996); *Roger Dingess*, 47 ECAB 123, 126 (1995); *Carl Epstein*, 38 ECAB 539 (1987).

<sup>6</sup> Section 8123(a) of the Act provides that: "[I]f there is disagreement between the physician making the examination for the United States and the physician for employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

<sup>7</sup> The Board notes that appellant also raised issues regarding lost sick and annual leave, reimbursement for doctor and pharmacy co-payments, lack of two compensation checks and processing her CA-7 form for a schedule award. As the Office has not issued a final decision on any of these issues, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated January 4, 2000 is hereby affirmed.

Dated, Washington, DC  
May 10, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member